**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD**

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**Writ Petition No.5965 of 1997**
**DATED 15-2-2007**

BETWEEN
Dhruba Charan Sahoo

.. Petitioner

And

The Inspector General(SWS)
Central Industrial Security Force,
RCFL Complex Chamber,
Mumbai and 2 others.

.. Respondents

**THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION NO.5965 of 1997**

**ORDER:**

Aggrieved by the order of the disciplinary authority dated 7.12.1991, whereby the petitioner was removed from service with immediate effect, and the order of the appellate authority dated 11.7.1992 rejecting the appeal as also the order of the revisional authority dated 7.8.1996, the present writ petition is filed.

The petitioner, a constable in the Central Industrial Security Force (CISF), was removed from service for the misconduct of assaulting a superior officer, after having a quarrel with him and

having used filthy language. An enquiry was conducted and the petitioner was furnished with the copy of the enquiry report asking him to submit his explanation. Thereafter, the punishment of removal from service was imposed. The charges held established against the petitioner were that while the head constable Sri N.Yogeshwar Rao was playing carroms in the recreation room along with others, the petitioner went there and started giving suggestions. On being asked to keep quiet, there was an exchange of words resulting in the play being stopped. The head constable Sri N.Yogeshwar Rao is said to have come to the recreation room with a lathi and started beating the petitioner. Thereupon, the petitioner took up the carrom board to protect himself and when the lathi slipped from the hand of the head constable, the petitioner is stated to have dropped the carrom board and chased the head constable with the lathi and to have beaten him and when he tried to do so again, the lathi hit the wall and broken into two. When both of them started quarreling with each other again, the other constables came to the recreation room and separated them.

S r i Mirza Nisar Ahmed Baig, learned counsel for the petitioner would seek to question the impugned order of punishment on the following grounds.

1. That the petitioner was not given adequate opportunity of cross examining the witnesses, resulting in the order of punishment being vitiated for violation of the principles of natural justice as also Rule 234(6) of the Central Industrial Security Force Rules.
2. Since the alleged incident took place in the

recreation hall when the petitioner was not on duty, he cannot be held liable for any mis-conduct for imposing any punishment.

3. The punishment imposed is shockingly disproportionate to the misconduct held proved, since the fact that the petitioner had beat the head constable only on grave provocation has been clearly made out from the findings of the enquiry officer himself.

4. The punishment is also discriminatory, inasmuch as the head constable was let off with a minor penalty whereas the petitioner was imposed with a major penalty of removal from service.

With regard to the first contention of denial of reasonable opportunity and in not being provided with an opportunity of cross examining the witnesses, the learned standing counsel was asked to produce the records and on verification of the records, it is clear that the petitioner, had in fact, cross examined all the management witnesses. The first ground, therefore, fails.

With regard to the second contention that the incident took place in the recreation room, the learned standing counsel would refer to Section 15 of the Central Industrial Security Forces Act, 1968 and under sub-Section (1) thereof, every member of the force shall, for the purposes of the Act, be considered to be always on duty. Therefore, the petitioner must be deemed to have been on duty even when the incident took place in the recreation room and the charge levelled against him of assaulting a superior officer and

to have indulged in a fist fight with him using vulgar language must, be held to be an incident, which took place while he was on duty in view of Section 15(1). Therefore, the second contention urged by Mr.Baig must also fail.

With regard to the contention that the punishment is disproportionate to the charges held established, the submission of Sri Baig that the incident had taken place only on the provocation of the head constable cannot be said to be without merit. A perusal of the enquiry report would show that while the petitioner had merely given suggestions when a game of carrom was being played in the recreation room, it was the head constable who had first acted in abusing and seeking to assault the petitioner. The fact, however, remains that in reply, the petitioner had not merely chosen to defend himself but had gone the next step in assaulting and beating the head constable with the lathi. It is well settled that this Court does not sit in appeal over the punishment imposed by the competent authority under the disciplinary rules, for the nature and extent of penalty to be imposed is, ordinarily, in the employers realm. It is only when the punishment imposed is one which could not have been imposed at all under the Rules or is one which shocks the conscious of the Court, would there be any justification for this Court to interfere in proceedings under Article 226 of the Constitution of India. It must also not be lost sight of that in the case on hand, we are dealing with a member of an armed force (CISF) for whom, discipline of a very high order is the norm. The charges held established are of assaulting a superior with a lathi. For such a charge established, it cannot be said that the punishment of removal

from service is the one, which shocks the conscious of this Court. As such, this contention is also required to be rejected.

With regard to the contention of discrimination, it must also be remembered that this Court does not sit in appeal and the mere fact that the head constable has been imposed with the punishment of reduction in pay by one stage would not justify interference of this Court nor would this Court be justified in substituting the punishment imposed on the petitioner by another. These are all matters for the competent authorities under the relevant rules to determine. The fact, however, remains that the entire incident commenced with the head constable first indulging in violent acts. While the petitioner cannot be absolved of the blame and would certainly be required to be sternly dealt with considering the fact that a lenient view has been taken insofar as the head constable is concerned, it would be appropriate if the revisional authority is directed to reconsider the matter only to the extent of the punishment imposed on the petitioner bearing in mind that a lenient view was taken against the head constable Sri N.Yogeswar Rao. It is made clear that this Court has not interfered either with the order of the disciplinary authority or that of the appellate authority. It is only because a lenient view has been taken against the head constable who, as per the evidence on record, had first assaulted the petitioner, it would be appropriate that the revisional authority reconsiders the quantum of punishment imposed on the petitioner in the light of the punishment imposed on the head constable. The petitioner is permitted to make a detailed representation in this regard only to the extent of the punishment imposed and the discrimination meted out to him.

Sri Baig submits that the petitioner shall make such a representation, within four weeks from the date of receipt of a copy of this order.

The first respondent shall in the light of the aforesaid observations, reconsider the matter and pass appropriate orders in accordance with law within three months from the date of receipt of the representation. Only to this limited extent, the order of the 1st respondent dated 7.8.1996 is set aside.

The writ petition is accordingly disposed of. No costs.

**RAMESH RANGANATHAN,J**

Dt: 15.2.2007
msv.